



4310-05-P

**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 950**

[SATS No: WY-043-FOR; Docket ID: OSM-2012-0020;  
S1D1SSS08011000SXDO66A0067F134S180110;  
S2D2SSS08011000SX066A00033F13XS501520]

**Wyoming Regulatory Program**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement,  
Interior.

**ACTION:** Final rule.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSM), is removing previously disposed-of state program disapprovals and required program amendments for Wyoming that remain codified in the Code of Federal Regulations (CFR). The disapprovals and required program amendments are no longer necessary because Wyoming subsequently submitted and obtained OSM

approval of revised regulations under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act).

**DATES:** Effective [Insert date of publication in the FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Fleischman, Chief, Denver Field Division, Telephone: 307-261-6550, Internet address: [jfleischman@OSMRE.gov](mailto:jfleischman@OSMRE.gov).

**SUPPLEMENTARY INFORMATION:**

- I. Discussion of Final Rule
- II. Procedural Determinations

**I. Discussion of Final Rule.**

At its own initiative (SATS number: WY-043-FOR, Administrative Record Docket ID No. OSM-2012-0020), OSM is removing certain Wyoming program disapprovals and required program amendments codified at 30 CFR 950.12 and 950.16 that have been previously addressed by the State and approved by OSM. A description of the disapprovals and required amendments being removed, including the citation and date of the original Federal Register document that

resulted in their removal, are listed below in the order that they appear in 30 CFR 950.12 and 950.16.

A. Previously Addressed State Program Provisions That Were Not Approved.

1. 30 CFR 950.12(a)(1).

The regulations at 30 CFR 950.12(a)(1) disapproved the phrases "run-of-the-mine" and "to separate the coal from its impurities" within the definition of "coal preparation plant" at Chapter I, section 2(m) of Wyoming's Coal Rules and Regulations. Wyoming subsequently deleted these phrases from its definition, and OSM approved their removal in a July 25, 1990, Federal Register (55 FR 30221, 30223).

2. 30 CFR 950.12(a)(3).

The regulations at 30 CFR 950.12(a)(3) disapproved the deletion of the requirement at Chapter II, section 3(a)(vi)(H)(II)(3) of Wyoming's Coal Rules and Regulations to collect baseline surface water data on acidity. Wyoming subsequently reinstated the requirement regarding surface water information at Chapter II,

section 2(a)(vi)(L)(IV), and OSM approved it in a November 6, 2002, Federal Register (67 FR 67540-67541).

3. 30 CFR 950.12(a)(4).

The regulations at 30 CFR 950.12(a)(4) disapproved the deletion of the locational data requirements for monitoring stations at Chapter II, section 3(a)(vi)(M) of Wyoming's Coal Rules and Regulations. Wyoming subsequently explained that the requirements were present in its current rules at Chapter II, section 2(a)(vi)(J)(VIII), and OSM approved it in a November 6, 2002, Federal Register (67 FR 67540, 67543).

4. 30 CFR 950.12(a)(6).

The regulations at 30 CFR 950.12(a)(6) disapproved the replacement of the word "is" with the phrase "the vegetative cover and total ground cover are" in Chapter IV, section 2(d)(vi) of Wyoming's Coal Rules and Regulations. Wyoming subsequently deleted the reference to "total ground cover" and added the term "absolute total" to the phrase "vegetative cover" in Chapter IV, section 2(d)(ii)(B)(I), which is revised text from Chapter IV, section 2(d)(x) in the currently approved rules. OSM approved

the deletion in a June 14, 2011, Federal Register (67 FR 34816, 34831).

5. 30 CFR 950.12(a)(7).

The regulations at 30 CFR 950.12(a)(7) disapproved the addition of the phrase "or an alternative success standard approved by the Administrator" to Chapter IV, section 2(d)(vi) of Wyoming's Coal Rules and Regulations. Wyoming subsequently deleted language in proposed Chapter IV, section 2(d)(i)(G) and 2(d)(ii)(B)(I), which is revised text from Chapter IV, section 2(d)(x) in the currently approved rules, that allows the use of unspecified alternative success standards when approved by the Administrator. OSM approved the deletion in a June 14, 2011, Federal Register (67 FR 34816, 34831).

6. 30 CFR 950.12(a)(10).

The regulations at 30 CFR 950.12(a)(10) disapproved all revisions to Chapter IV, section 3(a)(ix) of Wyoming's Coal Rules and Regulations concerning cut-and-fill terraces. Wyoming subsequently eliminated these revisions from its rules, and OSM approved their removal in a July 25, 1990, Federal Register (55 FR 30221, 30224).

7. 30 CFR 950.12(a)(11).

The regulations at 30 CFR 950.12(a)(11) disapproved the addition of section 1(a)(ii)(C), section 2(c), and section 3 to Chapter IX of Wyoming's Coal Rules and Regulations which would have provided a general variance from the approximate original contour requirements. Wyoming subsequently deleted the general variance provisions from its rules, and OSM approved their removal in a July 25, 1990, Federal Register (55 FR 30221-30222).

8. 30 CFR 950.12(b).

The regulations at 30 CFR 950.12(b) disapproved the addition of section 1(b)(iii) to Chapter XII of Wyoming's Coal Rules and Regulations which would have allowed personal property other than allowed by 30 CFR 800.5 (cash accounts, negotiable bonds, certificates of deposit, and letters of credit) to be posted as collateral bond. Wyoming subsequently revised its rules in Chapter XII governing self-bonding to allow the use of personal property as collateral for securing self bonds. The revised rules addressed OSM's previously expressed concerns, and OSM approved them in a July 25, 1990, Federal Register (55 FR 30221, 30226-30227).

B. Previously Approved Required Program Amendments.

1. 30 CFR 950.16(d).

The regulations at 30 CFR 950.16(d) required Wyoming to submit by September 24, 1990, a revision to its permanent program rules at Chapter IV, section 3(i) or otherwise propose to amend its program to require quarterly ground water monitoring for surface and underground coal mining operations. Wyoming subsequently amended its program as required, and OSM approved the changes in a November 6, 2002, Federal Register document (67 FR 67540, 67542).

2. 30 CFR 950.16(e).

The regulations at 30 CFR 950.16(e) required Wyoming to submit by September 24, 1990, a revision to its permanent program rules at Chapter IV, section 3(u) or otherwise propose to amend its program to give the State the authority to require additional preventive, remedial, or monitoring measures to assure that material damage to the hydrologic balance outside the permit area is prevented for both surface and underground coal mining operations. Wyoming subsequently amended its program as

required, and OSM approved the changes in a November 6, 2002, Federal Register (67 FR 67540-67541).

3. 30 CFR 950.16(h).

The regulations at 30 CFR 950.16(h) required Wyoming to submit by June 30, 1987, revisions of the Land Quality Division (LQD) rules at Chapter II section 3(a)(vi)(J)(II) or otherwise propose to amend its program to provide that the groundwater quality description in a permit application must include pH. Wyoming subsequently amended its program as required at Chapter II section 2(a)(vi)(M)(III)(4), and OSM approved the changes in a November 6, 2002, Federal Register document (67 FR 67540-67541).

4. 30 CFR 950.16(i).

The regulations at 30 CFR 950.16(i) required Wyoming to submit by June 30, 1987, revisions to the LQD rules at Chapter II section 3(b)(ix)(D) or otherwise propose to amend its program to specify the minimum groundwater quality parameters that must be monitored. Wyoming subsequently submitted an amendment clarifying that the required minimum groundwater quality parameters were present in its current rules at Chapter IV,



section 2(i), and OSM approved the changes in a November 6, 2002, Federal Register document (67 FR 67540, 67542).

Based on the information presented above, we are removing previously disposed-of state program disapprovals for Wyoming that remain codified at 30 CFR 950.12(a)(1), (3), (4), (6), (7), (10), (11), and (b) in this final rule. Additionally, we are removing previously disposed-of required program amendments for Wyoming at 30 CFR Part 950.16(d), (e), (h), and (i). Removal of these state program disapprovals and required program amendments does not alter the terms of our previous decisions or Wyoming's existing regulatory requirements.

## **II. Procedural Determinations.**

### Administrative Procedure Act

We are publishing this final rule without prior public notice or opportunity for public comment. The Administrative Procedure Act (APA), 5 U.S.C. 553, provides an exception to notice and comment requirements when an agency finds that there is good cause for dispensing with notice and comment procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(3)(B),

good cause exists for dispensing with the notice of proposed rulemaking and public comment procedures for this rule.

Specifically, we have determined that notice and comment is unnecessary for this rule because it is nonsubstantive. As discussed above, this rule removes provisions concerning previously disposed-of state program disapprovals and required program amendments for Wyoming that remain codified at 30 CFR 950.12 and 950.16, respectively. This rule neither imposes new regulatory requirements nor removes any existing regulatory requirements.

For the same reasons, we find that good cause exists under 5 U.S.C. 553(d)(3) to have the regulation become effective on a date that is less than 30 days after the date of publication in the Federal Register.

#### Executive Order 12866

This rule is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866. As discussed above, this rule removes provisions concerning previously disposed-of state program disapprovals and required program amendments for Wyoming that remain codified at

30 CFR 950.12 and 950.16, respectively. This rule neither imposes new regulatory requirements nor removes any existing regulatory requirements. For these reasons, we find that:

1) This rule will not have an effect of \$100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency for the reasons stated above.

3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

4) This rule does not raise novel legal or policy issues for the reasons stated above.

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). As discussed above, this rule removes provisions concerning previously disposed-of state program disapprovals and required program amendments for Wyoming that remain codified at 30 CFR Part 950.12 and 950.16, respectively. This rule neither imposes new regulatory requirements nor removes any existing regulatory requirements.

#### Small Business Regulatory Enforcement Fairness Act

As discussed above, this rule removes provisions concerning previously disposed-of state program disapprovals and required program amendments for Wyoming that remain codified at 30 CFR Part 950.12 and 950.16, respectively. This rule neither imposes new regulatory requirements nor removes any existing regulatory requirements. Therefore, this rule is not considered a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act, and it will not—

- 1) Have an annual effect on the economy of \$100 million.

2) Cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions because the rule does not impose new requirements on the coal mining industry or consumers.

3) Have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

#### Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on state, local, or tribal governments or the private sector. As discussed above, this rule removes provisions concerning previously disposed-of state program disapprovals and required program amendments for Wyoming that remain codified at 30 CFR 950.12 and 950.16, respectively. This rule neither imposes new regulatory requirements nor removes any existing regulatory requirements. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.) is not required.

### Federal Paperwork Reduction Act

This rule does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

### National Environmental Policy Act

This rule does not require an environmental assessment or environmental impact statement because section 702(d) of SMCRA, 30 U.S.C. 1292(d), provides that agency actions pertaining to approval of state regulatory programs do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

### Executive Order 12988 on Civil Justice Reform

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Executive Order 13211 – Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

Executive Order 13211 requires agencies to prepare a statement of energy effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. This rule is not considered significant under Executive Order 12866, nor would it have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a statement of energy effects is not required.

Executive Order 13175 – Consultation and Coordination with Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on federally recognized Indian tribes and have determined that the removal of previously disposed-of state program disapprovals and required program amendments for Wyoming that remain codified at 30 CFR Part 950.12

and 950.16 would not have substantial direct effects on the relationship between the Federal Government and Indian Tribes or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

#### Executive Order 12630 – Takings

Under the criteria in Executive Order 12630, this rule does not have significant takings implications; therefore, a takings implication assessment is not required. As discussed above, this rule removes provisions concerning previously disposed-of state program disapprovals and required program amendments for Wyoming that remain codified at 30 CFR 950.12 and 950.16, respectively. This rule neither imposes new regulatory requirements nor removes any existing regulatory requirements.

#### Executive Order 13132 – Federalism

This rule does not have federalism implications. For the reasons previously stated, it will not have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."



## Data Quality Act

In developing this rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106-554).

## List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface mining, Underground mining.

<u>/s/ Allen D. Klein</u>	<u>June 10, 2013</u>
Allen D. Klein	Date
Director	
Western Region	

For the reasons set out in the preamble, 30 CFR part 950 is amended as set forth below:

### **PART 950 - WYOMING**

1. The authority citation for part 950 continues to read as follows:

Authority: 30 U.S.C. 1201 et seq.

2. Revised § 950.12 to read as follows:

**§ 950.12 State program provisions and amendments not approved.**

The following provisions of the Rules and Regulations of the Land Quality Division of the Wyoming Department of Environmental Quality are not approved:

(a) [Reserved]

(b) [Reserved]

**§ 950.16 [Amended]**

3. In § 950.16, remove and reserve paragraphs (d), (e), (h), and (i) and remove reserved paragraphs (v) through (ll).

[FR Doc. 2013-17366 Filed 07/18/2013 at 8:45 am; Publication  
Date: 07/19/2013]